

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : David Alexander  
Application No. : 10/657,145  
For : **Interface Device and Method for Interfacing Instruments  
to Medical Procedure Simulation Systems**  
Filed : September 9, 2003  
Examiner : Timothy A. Musselman  
Art Unit : 3715

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**DETERMINATION**

Sir:

In accordance with 37 C.F.R. § 1.705(b), this request for reconsideration of Patent Term Adjustment Determination is made with payment of the Issue Fee, after the mailing of a Notice of Allowance. Applicant submits herewith the following:

- (1) Payment of the fee set forth in 37 C.F.R. § 1.18(e); and
- (2) A statement of the facts involved.

In the Notice of Allowance mailed January 26, 2010 (the "Notice of Allowance"), the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) indicated a PTA of 191 days. It is believed that the correct PTA to date is 1,128 days.

Applicant respectfully requests that the patent term adjustment indicated in the Notice of Allowance be reconsidered because the calculation of PTA does not appear to have included 1,125 days of PTO delay under the decision in *Wyeth* for failing to issue a patent within 3 years of the filing date of the application. In addition, the PTO does not appear to have correctly calculated the period of Applicant delay or the period of PTAO

based on the supplemental after-final response filed on May 13, 2005 in response to the Office Action mailed December 13, 2004.

In support of this request and pursuant to 37 C.F.R. § 1.705(b), Applicant makes the following statements:

I. Statements under 37 C.F.R. § 1.705(b)(2)(i)

The correct total PTO delay is believed to be 1,297 days and the correct total Applicant delay is believed to be 169 days. Thus, the correct total PTA is believed to be 1,128 days.

II. Statements under 37 C.F.R. § 1.705(b)(2)(ii)

The following dates are relevant to the time periods noted in section I above:

(1) 1,125 days of PTO delay are due under § 1.702(b) for failing to issue a patent within three years of the filing date of the application. The relevant dates are the date three years from the filing date of the application on September 9, 2006 and the filing of a Request for Continued Examination on October 8, 2009.

(2) 0 days of PTO delay are due under 37 C.F.R. § 1.703(a)(3) for failing to issue an Office Action or Notice of Allowance within 4 months of a reply under § 1.113(c). This was noted as 31 days of delay on PAIR. The relevant dates are the filing of a supplemental response to Office Action on May 13, 2005 and the mailing of a non-Final Office Action on August 17, 2005, within 4 months of the supplemental response.

(3) 172 days of PTO delay are due under 37 C.F.R. § 1.703(a)(3) for failing to issue an Office Action or Notice of Allowance within 4 months of a reply under § 1.113(c). The relevant dates are the filing of a response to Office Action on November 21, 2005 and the mailing of a Final Office Action on December 11, 2006 (265 days), less the period between September 9, 2006 and December 11, 2006 (93 days), which overlaps with the period set forth in (1) above.

(4) 0 days of PTO delay are due under 37 C.F.R. § 1.703(a)(3) for failing to issue an Office Action or Notice of Allowance within 4 months of a reply under § 1.113(c). The relevant dates are the filing of a response to Office Action on March 3,

2008 and the mailing of a Final Office Action on July 10, 2008 (7 days); however, this entire period overlaps with the period set forth in (1) above.

The total PTA credits under 37 C.F.R. § 1.702(a) and § 1.702(b) based on the credits and overlap noted above is 1,297 days.

III. Statements under 37 C.F.R. § 1.705(b)(2)(iii)

The patent issuing from the present application is not subject to a terminal disclaimer.

IV. Statements under 37 C.F.R. § 1.705(b)(2)(iv)

The following statements are required by 37 CFR § 1.705(b)(2)(iv)(A) and list any circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in § 1.704:

(1) 61 days of Applicant delay are owed under 37 C.F.R. § 1.704(b) for filing a response to non-Final Office Action more than 3 months following the mailing date of the non-Final Office Action. The relevant dates are the mailing date of the non-Final Office Action on December 13, 2004 and the date a supplemental response was filed on May 13, 2005.

(2) 4 days of Applicant delay are owed under 37 C.F.R. § 1.704(b) for filing a response to non-Final Office Action more than 3 months following the mailing date of the non-Final Office Action. The relevant dates are the mailing date of the non-Final Office Action on August 17, 2005 and the date a response was filed on November 21, 2005.

(3) 3 days of Applicant delay are owed under 37 C.F.R. § 1.704(b) for filing a response to non-Final Office Action more than 3 months following the mailing date of the non-Final Office Action. The relevant dates are the mailing date of the non-Final Office Action on December 11, 2006 and the date a response was filed on March 14, 2007.

(4) 5 days of Applicant delay are owed under 37 C.F.R. § 1.704(b) for filing a response to non-Final Office Action more than 3 months following the mailing date of the non-Final Office Action. The relevant dates are the mailing date of the non-Final Office Action on June 5, 2007 and the date a response was filed on September 10, 2007.

(5) 5 days of Applicant delay are owed under 37 C.F.R. § 1.704(b) for filing a response to non-Final Office Action more than 3 months following the mailing date of the non-Final Office Action. The relevant dates are the mailing date of the non-Final Office Action on November 27, 2007 and the date a response was filed on March 3, 2008.

(5) 62 days of Applicant delay are owed under 37 C.F.R. § 1.704(b) for filing a response to non-Final Office Action more than 3 months following the mailing date of the non-Final Office Action. The relevant dates are the mailing date of the non-Final Office Action on September 30, 2008 and the date a response was filed on March 2, 2009.

(5) 29 days of Applicant delay are owed under 37 C.F.R. § 1.704(b) for filing an RCE more than 3 months following the mailing date of a Final Office Action. The relevant dates are the mailing date of the Final Office Action on June 9, 2009 and the date an RCE was filed on October 8, 2009.

The total PTA debits under 37 C.F.R. § 1.704 based on the debits noted above is 169 days.

#### V. Conclusion

Applicant respectfully requests the PTA determined by the U.S. Patent and Trademark Office by reconsidered in light of the foregoing. Based on the total PTA credits and debits set forth above, the correct PTA for the present application is 1,128 days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl Sanders', written over a horizontal line.

Carl Sanders  
Reg. No. 57,203

Date: April 23, 2010

KILPATRICK STOCKTON LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101  
(336) 607-7474 (voice)  
(336) 734-2629 (fax)